

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

KODY K. BURNETT,

Petitioner,

VS.

Warden ANNETTIA TOBY,

Respondent.

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NO. 3:23-cv-50-TES-CHW

ORDER

Petitioner Kody K. Burnett, a prisoner incarcerated in Hancock State Prison in Sparta, Georgia, filed a 28 U.S.C. § 2254 petition challenging his July 21, 2021 conviction in the Superior Court of Madison County and moved to proceed *in forma pauperis*. [Doc. 1]; [Doc. 2]. On May 1, 2023, the Court ordered him to supplement his petition by providing information regarding exhaustion of state remedies and to provide a “certificate from the warden or other appropriate officer . . . showing the amount of money . . . that [he] has in any account in the institution.” *See* Rule 3 of the Rules Governing Section 2254 cases in the United States District Courts. [Doc. 4].

Petitioner did not supplement his petition with exhaustion information. Additionally, he did not send a certificate signed by the warden or other appropriate officer at the prison showing the amount of money he has in his account. Instead, he mailed the same document he included with his original motion to proceed *in forma pauperis*—an unsigned account certification. [Doc. 5]. The Court, therefore, ordered Petitioner to show cause why his case should not be dismissed for failure to follow the Court’s May 1, 2023

Order. [Doc. 6]. Petitioner did not respond to the Order to Show Cause.

Due to Petitioner's failure to follow the Court's Orders and prosecute this action, the case is hereby **DISMISSED WITHOUT PREJUDICE**. Fed. R. Civ. P. 41(b); *Brown v. Tallahassee Police Dep't*, 205 F. App'x 802, 802 (11th Cir. 2006) (citing Fed. R. Civ. P. 41(b) and *Lopez v. Aransas Cnty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978)) ("The court may dismiss an action *sua sponte* under Rule 41(b) for failure to prosecute or failure to obey a court order.").

SO ORDERED, this 14th day of June, 2023.

S/ Tilman E. Self, III

TILMAN E. SELF, III, JUDGE
UNITED STATES DISTRICT COURT